

These minutes were approved by the Hawai'i Island Burial Council as submitted on January 27, 2000.

## **MINUTES**

### **HAWAII ISLAND BURIAL COUNCIL MEETING**

**DATE:** THURSDAY, SEPTEMBER 16, 1999  
**TIME:** 11:00 A.M.  
**PLACE:** KING KAMEHAMEHA'S KONA BEACH HOTEL  
75-5660 PALANI ROAD, BALLROOM #3  
KAILUA-KONA, HAWAII 96740

#### **ATTENDANCE:**

**Members:** Heather Cole Marie Solomon  
Nalei Pate-Kahakalau J. Keolalani Hanoa  
Keikialoha Kekipi Roger Harris  
Charles Young Kealoha Pisciotta  
Geraldine Bell Perry Kealoha

**Staff:** Kala`au Wahilani, Historic Sites Specialist  
Marc Smith, Asst. Hawai'i Archaeologist

**Guests:** Jim Medeiros, Sr., Cultural Descendant  
Ben Kudo, 1250 Oceanside Partners  
Stacy Uehara, 1250 Oceanside Partners  
Mahealani Pai, Cultural Descendant  
Ruby McDonald, OHA's Kona  
Representative  
William Pai  
M.K. Rayne, Kaleo O Aloha `Aina  
Kathleen K. Hooper Alani, Kahiana `Ohana  
Mahina Pai, Nahuawai `Ohana  
Louis Pali Alani, Sr., Kahiana `Ohana  
Pele Hanoa, Kupuna  
Rick Humphreys, Hokuli`a  
Leina`ala Benson, SCS Archaeology  
Tomasí Patolo, SCS Archaeology  
Robert Stuit, 1250 Oceanside Partners  
Earl Deleon, Aupuni O Hawai'i  
Dick Frye, 1250 Oceanside Partners  
Gordon Leslie  
Harry Yonemura  
Susan Yonemura

Hannah Reeves, Cultural Descendant  
Kaliko Chun, Cultural Descendant  
Curtis Tyler, Cultural Descendant  
Richard L. Ferrande, H.C.B.G.  
Stanley Bond, Kaloko-Honokohau National  
Historic Park  
L. Mei Lan Sharpe  
Irene Depina  
John Kalili, Lineal Descendant  
Kahu Keana`aina

## **I. OPENING REMARKS**

Chair Nalei Pate-Kahakalau (Pate-Kahakalau) called the meeting to order.

## **II. APPROVAL OF AUGUST 26, 1999, MEETING MINUTES**

A motion was made and unanimously accepted to defer the approval of the August 26, 1999, Meeting Minutes to the end of the meeting (**Hanoa/Bell**).

**Vote: All in favor.**

## **III. BUSINESS**

### **A. KALOKO-HONOKOHAU NATIONAL HISTORIC PARK; NORTH KONA; HAWAII ISLAND**

**Information/Recommendation:** Presentation by Stan Bond, Cultural Resources Manager, regarding inadvertent discovery of human remains within Kaloko-Honokohau National Historic Park.

Kala`au Wahilani (Wahilani) stated that the State Historic Preservation Division (SHPD) was notified by the U.S. Department of the Interior, National Park Service, Kaloko-Honokohau National Historic Park, of inadvertent skeletal remains which were discovered in the Park, and as part of the NAGPRA, the SHPD had asked Dr. Stanley Bond (Bond) to come and begin this NAGPRA consultation process which is purely informational on the part of the National Park Service. The public will have an opportunity to give their mana`o after Bond testifies.

Bond said that the remains were discovered on August 6, 1999. As soon as they were discovered, the remains were covered to prevent any further weathering or damage from the outdoors or any further visual impact. Members of the burial council and the OHA's Kona Representative were contacted to observe the site and condition of the remains. The following week, a physical anthropologist from the University of Hawai`i, Dr. Michael Pietrusewsky (Pietrusewsky), examined the site to determine whether or not these were in fact human remains and to determine, if possible, the condition and how they ended up in that position. The site was secured by covering the remains with cloth, a piece of plastic, and a wooden box that they built. Lava rock was put around and on top of the box to disguise the site. A letter was sent to the burial council beginning the NAGPRA process and requesting input and information in order to develop an appropriate plan on how to deal with this inadvertent discovery.

The remains appear to be two individuals. The bones constitute leg bones and skull fragments, consistent with a secondary burial. The burial itself had been heavily disturbed by activity on the site. Between 1969 and 1971, the site was quarried for lava rock which was used for road fill on the construction of the highway. Construction equipment for the highway was parked on that site.

Bond said that in developing plans for the Park, that area appeared to be the most usable area for a visitor center, restrooms, and activities because it was believed that activity in that area wouldn't impact any cultural remains because they've already been impacted during the highway construction. Surveys had been carried out on that property -- the latest one in February 6, 1996, performed by Laura Schuster. There were no cultural remains noted at that time. The Park purchased that area in 1988.

Council Member Charles Young (Young) stated that he was out there on three occasions. The first occasion was on August 12, 1999; Ruby McDonald (McDonald) and Park personnel accompanied him. Council Member Geraldine Bell (Bell) had notified him by telephone the day before. Discussions were about verifying whether the iwi were human remains. His concern was that the iwi be taken care of immediately, and he was also informed about the NAGPRA process that must be followed. The following week he returned when Pietrusewsky came to visit and recommendations were made to leave the iwi in place and cover it as soon as possible. By his third visit which was by himself, the iwi was indeed covered, and Bond must have been setting the process in terms of NAGPRA by his September 1, 1999, letter.

Council Member Keolalani Hanoa (Hanoa) asked if Kaloko-Honokohau has a kupuna advisory council like other national parks? Bond replied yes -- Nakakua Kaloko-Honokohau which is a friends group and a federally-recognized advisory group by law that advises them. Hanoa asked whether those groups were advised of this inadvertent discovery? Bond said no.

Bond said the discovery occurred on a Friday afternoon; he contacted Bell the following Monday morning; Bell and Young came out on Tuesday; and McDonald came out on Thursday.

McDonald said that two years ago, she and her kamali'i and mo'opuna volunteered to bundle pili grass at the hale wa'a and indicated that the subject iwi was not there. McDonald, who considers herself an expert at identifying iwi, finds it hard to believe that she and her family didn't notice the iwi in the location where it was inadvertently discovered.

Bond said that the only activity that took place was that fill has been brought in for part of the parking area and spread out back in 1997 or 1998, but that particular area doesn't look like it was filled.

John Kalili, lineal descendant, testified on behalf of himself, Ed Kaiwi and Mahealani Pai, lineal descendants, and stated that as soon as the inadvertent discovery of human remains was made, the lineal descendants should be notified as soon as possible and that they are the only ones that can handle the skeletal remains.

A motion was made and unanimously accepted that the council schedule a before any decisions are made in this case (**Kekipi/Hanoa**).

**Vote: All in favor.**

Mahealani Pai (Pai) testified that he seeks the council's assistance in the return of kupuna iwi that was removed in the later part of the Sixties -- 1967, 1968. A salvage report written by Edmund Ladd of the Bishop Museum's Department of Anthropology confirms that. The report states that skeletal material and associated artifacts are stored at the City of Refuge National Historic Park. Pai said that it's no longer necessary for the iwi to be stored there and should be returned to Honokohau.

Pate-Kahakalau recommended that the State makes a concerted effort to return the iwi to this `ohana for appropriate cultural practices to be done.

A motion was made and unanimously accepted that the State work in consultation with the National Park Service in retrieving and returning the iwi to Kaloko-Honokohau and applicable families for appropriate cultural burial practices and whatever else needs to take place at that time (**Kekipi/Hanoa**).

**Vote: All in favor.**

Kahu Keana`aina testified that he's the administrator of the `aina of the Kekaha Protestant Church. The church was removed in the Forties. Kahu Keana`aina said that he knows that the council needs their input and kokua and asked that he be put on the list so he may come and kokua because he knows that the council is doing its best for our ancestors and himself.

A motion was made and unanimously accepted to go into executive session to receive some sensitive input before **ITEM B.** is addressed (**Hanoa/Bell**).

**Vote: All in favor.**

Wahilani cleared the room, except for the Council's Kupuna Advisory Council -- Pele Hanoa, Ulu Garmon, and Ruby McDonald.

**B. HOKULI`A DEVELOPMENT PROJECT; TMK: 7-9-12:04; 7-9-12:11; 8-1-4:03; AND 8-1-4:56; NORTH AND SOUTH KONA; HAWAII ISLAND**

**Information/Recommendation/Determination:** Formal determination by council to relocate or preserve in place affected burials within project area; receive testimony on the Burial Treatment Plan by lineal/cultural descendants; and council discussion on Burial Treatment Plan and inadvertent burials found within project area.

Pate-Kahakalau opened the floor to receive testimony from lineal/cultural descendants on Oceanside 1250's revised burial treatment plan. Pate-Kahakalau said that thereafter, the council may make further recommendations dealing with the Hokuli`a Project and will make a formal determination today.

Pate-Kahakalau read for the record written testimony submitted by Lineal Descendants E. Emalia Keohokalole and J.M. Keaweheulu Keohokalole (see Exhibit "A" attached hereto).

Cultural Descendant Curtis Tyler (Tyler) officially requested that he be placed on SHPD's mailing list for any future Hawai`i Island Burial Council (HIBC) notices, agendas, and minutes pursuant to HAR Chapter 13-300, 12(c) and 25(b).

Tyler asked whether authorization was ever given to the applicant regarding the removal of any burial goods or human skeletal remains on the subject property? Pate-Kahakalau replied that from the time he's been on this council -- for the last 3-1/2 years -- no such authorization was given. Tyler asked if the council could prior to its determination 1) inquire as to whether or not at any time there was any removal of skeletal remains and/or burial goods; 2) what the status is of those, if any, 3) what plans are being made in conjunction with their preservation in place management approach?

Tyler asked if there was any difference between an approved burial treatment plan and an accepted burial treatment plan? Wahilani replied that a burial treatment plan is accepted when it's submitted to the Department, and the Department finds that it's in compliance with all pertinent laws. A burial treatment plan is approved when the council, in consultation with lineal/cultural descendants and the developer, agree on the formal determination and recommendations, if any.

Tyler asked if Oceanside 1250's revised Burial Treatment Plan dated September 1999 was accepted by the Department? Wahilani replied yes. Tyler stated that he begs to differ. All of the proposed revisions that were suggested in July have been incorporated into the latest version. However, the council made no decision whatsoever, nor have all the lineal/cultural descendants been consulted with on any of those proposed revisions.

Tyler said that in most instances and prior to any determination and approval of a burial treatment plan, there have been the discovery of additional unmarked burial sites containing human remains. In this case, the applicant has identified them and has appropriately informed SHPD and the council. These remains must be classified as previously identified sites according to SHPD's administrative rules. Tyler asked the council to make sure that these are incorporated in the final plan upon which it will be making its determination.

Tyler said that he's still concerned about the CC&Rs as they relate to the historical sites; in particular, the burials, because these provisions, however it's recorded, to be sure that who controls if any changes can be made with respect to these cultural sites, what involvement any descendants would have in this process, what provision is there for this to be ensured in perpetuity, and what provisions are available for this council or any lineal/cultural descendant, or the Department, individually or collectively, to insure that proper enforcement and appropriate penalties are available to ensure that in the event in the future that these are not adhered to, that there is a provision for this.

Tyler said that he concurs with the statements made by the lineal descendants relating to buffers. With respect to shoreline park access, access through the shoreline park at certain locations must be guaranteed on a 24-hour basis for those persons who wish to use the ocean resource for fishing and gathering, etc.

Tyler said that he believes that this council cannot make a determination today because the September 1999 revised burial treatment plan has been erroneously accepted by the Department (citing HAR Chapter 13-300-33, ¶B, §2-4).

Wahilani explained that when the Department signed on the interim preservation plan for Hokuli`a allowing the first permit to go through and notifying the council, the Department was in a dilemma so the council recommended the Department to seek advice from the Attorney General. We were not able to

stop what was happening at Hokuli`a because the permit was issued, and there were countless numbers of people already working. A survey is usually done first, and then a burial treatment plan is submitted. However, in order to avoid undue economic hardship to the Hokuli`a employees, the remains that are found now will be classified as inadvertent, thereby allowing the council to proceed with its determination and recommendations on this plan. Therefore, the State did violate its own rule; however, the State wasn't willing to order Hokuli`a to lay off their employees until a survey was completed before coming back to the council.

Wahilani said that the issue today is a formal determination to preserve in place or relocate. This decision is out of the scope of the State's responsibility and rests with the council itself. A determination must be made by the council within 45 days from today.

Tyler cited HAR Chapter 13-300-31, A(4) and added that if the Department has any oral or written knowledge of any burials at this time that are not included in the current burial treatment plan, then the burial treatment plan is incomplete in accordance with the rules. If the Department made an error, don't compound that error by making another. If the Department erroneously noticed this agenda item for a final determination today, then the State would be in grave and gross violation of the intent of its own rules. We don't know what the mana`o is of the cultural/lineal descendants which is required.

Cultural Descendant Jim Medeiros, Sr. (Medeiros) questioned whether non-lineal/cultural descendants could participate in site inspections at burial sites? Medeiros said that at a recent site visit on the subject property, a cultural descendant brought guests who had apparently videotaped during the site inspection. It's unknown what was exactly videotaped; however, Medeiros said that it disturbed him, especially since hesitation guest

Medeiros said that regarding buffers, he's satisfied with a 50' construction buffer and 20' permanent buffer, both from the outside edge of the graves.

With regard to Medeiros's initial concern about site visits, Pate-Kahakalau recommended that the council make a concerted effort to ensure that all future site visits be limited to SHPD Staff, burial council members, cultural/lineal descendants, developers, and those associated with them so we don't have ke kanaka maoli running all over the place disseminating information.

A motion was made and unanimously approved to accept Pate-Kahakalau's recommendation that the council make a concerted effort to ensure that all future site visits be limited to SHPD Staff, burial council members, cultural/lineal descendants, developers, and those associated with them (Kekipi/Hanoa).

**Vote: All in favor.**

Cultural Descendant Hannah Wahinemaika`iokaahumanu-keliulananiokalamakane Reeves (Reeves) asked the applicant the following questions: 1) Did you do your homework on this property?; 2) Does Oceanside 1250 have clear title?; and 3) Did you contact any of the people that sold the land to Oceanside 1250 to find out the history of that area?

Reeves said that she believes that the Bishop Estate has something to do with this land. Reeves said that she wants to know all the history and wants to take this information back to the Kupuna Council

(Hawaii Community Based Governance) because this Council is connected to that land. Reeves said that she thinks that the Bishop Estate sold a cemetery to Oceanside 1250. Reeves said that she just received the revised burial treatment plan only 24 hours ago; therefore, she requested for an extension of time within which to have an opportunity to bring this plan back to the Kupuna Council to review and appropriately comment.

Gordon Leslie (Leslie) said that as a descendant of some of the iwi of the `aina, he's concerned with a 6' stone wall around Pu`u Ohao will prohibit lineal descendants from entering the pu`u and not to mention the liability factor if any kamali`i would try to climb up a 6' wall. The Department of Public Works requires a special wall permit when constructing something 6' high. Our people never used stone walls as an enclosure, except for Pu`uhonua and areas like that. A wall around the pu`u at least on the conservation line would be appropriate with breach sections in the wall in order to have access to the pu`u. The wall but should not be 6' high, but a height that is more pleasing to the view plane of the area.

There should be no overnight camping for the public. At this time, it's premature for him to say what's best for the use of the park area, but Oceanside's Resource Group will facilitate and come up with rules on how to manage the beach park and will reach a determination later. Regarding buffers, his preference for a permanent buffer zone would be 15' from the edge or 20' from the middle of the grave as far as the area to be enclosed. A stone wall of a sensible height (about 3' high) around the iwi at that final kapu area with a small gate so the descendants can enter the site when necessary. Leslie's preference for a construction buffer zone would be 50' from the edge of the grave with green steel posts around that perimeter; inside the perimeter -- whether it be 15' or 20' permanent buffer zone from the edge of the grave -- should be fenced in with the orange fencing.

Leslie suggested that as far as the council's decision today, it should be to preserve in place -- as is.

Cultural Descendant Kaliko Chun (Chun) stated that she didn't receive the September 1999 version of Oceanside 1250's Burial Treatment Plan. She also requested for a copy of SHPD's Hawai`i Administrative Rules. Chun said that her preference for a construction buffer is 100' and a permanent buffer at 50'. Sea caves and lava tubes should have a permanent buffer at 50' as well. Chun is advocating for the iwi to be preserved in place.

Kathleen Alani Kahiana (Kahiana), kanaka maoli, explained that she knew nothing about this matter until she saw her tutu's name in the West Hawai`i. She appreciates the fact that she was able to attend the site visit. She's testifying today as a kanaka maoli -- at least until her family is able to provide her genealogy to SHPD and is recognized by the council as a lineal/cultural descendant. At the site visit, she felt the spirit of her ancestors who want to be at rest. She and her family wants to malama the iwi and wishes for in place preservation.

Cultural Descendant Pai testified that no construction be allowed within 50' from the edge of the site and 50' permanent buffer from the edge of the site. The ones with lava tubes should be larger. He didn't get to see Hokukano on the site visit.

Pai said that there should be perpetual access for descendants for religious and cultural practices. Native foliage and/or stones should be used for landscaping.

Irene Depina (Depina) is Gordon Leslie's sister, and both Leslie and she are present today to represent their family.

A motion was made and unanimously accepted to preserve in place all the burials situated in the Hokuli`a project area, including the preserve (**Young/Kekipi**).

**Vote: All in favor.**

A motion was made and unanimously accepted that for the interim a temporary construction buffer of at least 70' be established from the outer edge of all burial sites until the council can discuss further issues at a future meeting (**Kealoha/ Pisciotta**).

Frye commented that he'd like to submit something in writing of his comments and reactions to what was said today before the next meeting. Relative to the motions that were just made, he's okay with that so that they're able to do the things they're doing. They'll move their warning stakes out an additional 20' so this process can keep moving forward as well.

**Vote: All in favor.**

A motion was made and unanimously accepted to defer any further action or recommendations dealing with any aspect of the burial treatment plan until the next meeting in October (**Young/Hanoa**).

**Vote: All in favor.**

### **C. BURIAL SITES PROGRAM**

**Information/Recommendation:** Discussion of Burial Sites Program including, but not limited to, burials video and program update.

Wahilani reported that the Burial Sites Program has undergone reorganization. The Program Director, Ka`iana Markell, is in charge of Moloka`i and all problematic cases, the legal in situ agreements that have been backlogged for a while, and Governor Referrals. Kana`i Kapeliela, our Cultural Specialist, is now responsible for Kaua`i/Ni`ihau and Maui/Lana`i. Wahilani said that he's responsible for Hawai`i and O`ahu.

The National Park Service (NPS) has granted an extension to our program until December for completion of our burials video.

Video shoots have been scheduled with various council members and kupuna all over the state. We've had meetings with the NPS over the script.

### **D. CASE UPDATES**

**Information/Recommendation:** Discussion of recent inadvertent discoveries and staff updates on ongoing cases.

None.

## **II. APPROVAL OF AUGUST 26, 1999, MEETING MINUTES**



A motion was made and unanimously accepted to defer approval of the August 26, 1999, Meeting Minutes until the next meeting (**Young/Cole**).

**Vote: All in favor.**

#### **IV. ANNOUNCEMENTS**

Site visits have been scheduled at the Daxyn Trust parcel and the Pua Pua`a Iki parcel have been scheduled for October 21, 1999, at 9:00 a.m. and 10:30 a.m., respectively.

At the next meeting, we'll be scheduling a site visit at Kaloko-Honokohau National Historic Park.

NASA will be appearing at the council's next meeting to brief the council on the Keck Project.

#### **V. ADJOURNMENT**

There being no further business, Pate-Kahakalau adjourned the meeting.

Respectfully submitted,

Michelle K. Bradley  
Historic Sites Preservation Specialist